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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,682	04/13/2001	Robert Eugene Vogt	29566/KC15,412	4329
22827	7590	03/31/2006	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			REICHLER, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/834,682

Applicant(s)

VOGT ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2005 and 11 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,8-12 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) 6,7,13 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,8-12 and 21-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 October 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 6-7 and 13-14 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 4.

Amendments

2. The amendment to page 15, first paragraph, filed 1-11-06 is still unclear because while it shows an unindented underlined portion that portion starts on a new line rather than continuing on the previous line after the last crossed through word thereon. Also, the 10-7-05 amendment included an amendment to page 15, the third paragraph but such has not been included in the amendment of 1-11-06 but all the other amendments of 10-7-05 are. Does Applicant still wish to amend such paragraph? Therefore the amendments to the specification filed 10-7-05 and 1-11-06 have not be entered. Applicant's attention is further invited to the discussion of the Figures filed 10-7-05 infra. Still further Applicant's attention is invited to the discussion of the claim language added to the claims infra which is the same as or substantially similar to some of the proposed but unentered specification changes. In light of the non-entry of the specification amendments, the amendment to the Summary of the Invention section filed 4-22-05 is still unclear. While it is requested that the Summary be cancelled and replaced, only one paragraph of the Summary as it existed prior to that amendment is shown struck thru, i.e. it is unclear whether only the one paragraph was to be cancelled or whether the entire section was to

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cancelled but the amendment did not comply with 37 CFR 1.121. Therefore, such amendment is being treated as an amendment to only the one paragraph of the entire Section and the remainder of the section as originally filed is treated as still present. If Applicant desires the remainder of the section to be canceled Applicant should do so in compliance with 37 CFR 1.121 in the next response, if any.

Specification

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For example:

Drawings

4. The drawings were received on 10-7-05. These drawings are not approved by the Examiner or the draftsman. With regard to latter, see the PTO-948 which accompanies this action. Furthermore see the discussion in paragraph 2 supra which non-entered amendments provided the description of many of the proposed changes. Still further, in the proposed Figures, ends or edges 31Ab and 31Bb are shown differently in Figures 1 and 2 than in 3, i.e. such is laterally further outward than 39A and 39B in the former but not in the latter.

5. The drawings are objected to because where is the free area as set forth in the description and claims shown/denoted? Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any

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amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Description

6. The disclosure is objected to because of the following informalities: 1) The Summary of the Invention Section is redundant, i.e. page 4, line 29-page 7, line 3 of the original Summary should be deleted. See discussion in paragraph 2 supra. 2) In the amendment to page 13, line 20, the second to last sentence is missing a word or words. Note again the discussion in paragraph 2 supra. 3) In the added paragraphs of the Summary of the Invention section, the amendment to page 13, line 20 and claims 22-24 Applicant now sets forth that the attachment sites move or ride with the lateral sections as the latter stretch. However such description appears, at the very least, to be inconsistent with the description of the invention as originally set forth. A clear consistent description of the structure supported by the original disclosure should

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be set forth. It is noted that the originally filed specification teaches that the lateral sections are at the very least resiliently extensible. The specification also teaches that the attachment sites are between the lateral sections and the side edges of the front portion. However, such side edges have not been disclosed as being at the very least resiliently extensible. The attachment sites are formed by the structure as set forth, e.g., in claims 4, 11 and 23 but such site structure has also not been disclosed as at the very least resiliently extensible. Additionally the intact sites have been disclosed as stabilizing the lateral sections relative to the front portion, i.e. the longitudinal axis thereof. Therefore, it appears, at most, the original specification supports the lateral sections surrounding the attachment sites being resiliently stretchable relative to such sites. The attachment sites themselves, i.e. the structure of claims 4, 11 and 23, as best understood, would not, or, at the very most, only negligibly move with or ride on such material, i.e. to the extent they can still stabilize and up to the strength at which they will break rather than the front portion fracturing (It is noted that no specific dimensions of the strength have been denoted), because the sites are also attached to the front portion neither of which structures are resiliently extensible, i.e. the only stretchable part is the lateral section surrounding the sites. It appears only the lateral sections would stretch relative to the sites until they reach their maximum elongation. At this point, since the sites are described as not fracturing the front portion, the sites or attachments would break rather than the front portion or lateral section materials fracturing. This does not appear to be the same as what is disclosed and claimed by the application as now amended. See also response to Arguments section *infra*.

Appropriate correction is required.

Claim Language Interpretation

7. Where Applicants have not specifically defined any claim language, the language will be given its common, i.e. dictionary, definition. It is noted, see, e.g., claim 8, lines 6-7, that the outer portion is not set forth as only being defined between the fastener receptive area on the front portion and the outer edge of the lateral section or extends from the area to the edge (It is noted that the specification as originally filed does not specifically disclose where the inner portion stops and the outer portion begins. However, it is disclosed that the fastener is attached to the inner portion and to the receptive area and the outer portion extends from the inner portion to the outer edge, so some part of the outer portion must be between the receptive area and the outer edge). The claims only require some portion of the outer portion be between the area and the edge. It is further noted that, e.g., see claim 8, lines 10-15 and similar language in claim 22, the claims only require sites which are 1) inward of and 2) adjacent to the side edges and 3) which are closest to the inner edge of the fastener to be 4) closer to the side edge than the inner edge (“adjacent” as defined by the dictionary is “Close to, lying near. Next to; adjoining”), i.e. sites which are not inward of and adjacent to the side edges are not required to be closer to the side edge. It is also noted that “adjacent” is also a relative term absent claiming of a specific distance. It is noted that the claims do not require the outer portion to be attached to the front portion only by “the at least one attachment site” having requirements 1)-4) supra. It is still further noted that a “fastener receptive area” and “a releasable fastener” as claimed in claims 8 and 22 and releasable fastening to the front portion as claimed in claim 22 do not require the capability of refastening after release. Claim 8 also requires the strength of attachment being sufficiently weak such that the sites can be separated from the front portion to adjust the

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releasable fastener, i.e. the fastener has the capability of adjustment. "Adjust" as defined by the dictionary is "To change so as to match or fit; cause to correspond. To bring into proper relationship". "Fracturing" is defined in the amendment to page 12, line 9, lines 1-4 thereof and therefore "without substantially fracturing" is defined as without fracturing taking into account any manufacturing tolerances. However no specific dimensions of strength of attachment are claimed. With regard to claims 22-24, see discussion supra in paragraph 6. Due to the lack of clarity as to what moves and what does not move, if the lateral sections move relative to the attachment sites to some extent, e.g. to allow the article to be pulled on and off like a pant, alone or the sites move along with the sections as the sections stretch, such will be considered to meet the claim language. It is noted in the latter case that the specific amount of movement and stretchability has not been claimed, e.g. anything more than no movement and no stretchability would meet the limitation. With regard to claim 24, the claim now requires lateral sections being free from direct attachment to the front portion at a free area between the releasable fastening at the inner portion and the said at least one attachment site. However it is also noted that the free area is not required to include the entire area between the fastener and the attachment site adjacent the side edges. With regard to the language added to claims 8 and 22 by the 10-7-05 amendment, see the discussion infra and MPEP 2163.06, I.

Claim Rejections - 35 USC § 112

8. Claims 1, 3-5, 8-12 and 21-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled

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in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant now claims the attachment sites being configured to remain intact when the outer edges of the releasable fasteners are lifted from the receptive area and moved toward each other and claim 22 now claims the outer ends being configured to be lifted away from the receptive area without breaking the attachment sites and moved towards each other. It is noted that Applicant did not provide any specific reference to the any specific portion of the specification as originally filed for support for such amendments. Furthermore, such amendments do not appear to be supported by the original specification at, e.g., page 11, line 24-page 12, line 8, page 21, line 26-page 23, line 4, page 24, lines 20-25, i.e. the original specification discloses fracturing of the sites to permit adjustment in the elected embodiment. If Applicant maintains such claim language the specific portion of the original specification relied upon for the support thereof in a single embodiment, i.e. the elected embodiment, should be set forth. See also discussion in the prior art rejection *supra*.

Claim Rejections - 35 USC § 102

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 1, 3-5, 8-12 and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Romare '484.

Claims 8, 3-5, 10-12: See Claim Language Interpretation section *supra*, and abstract, Figures, especially Figures 2-3, col. 1, line 57-col. 2, line 22, col. 2, lines 40-63, col. 3, line 21-col. 4, line 21, col. 4, lines 26-66 and col. 5, lines 6-53, i.e. Romare discloses a personal care

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article having a longitudinal axis and comprising a front portion, 6 or 106; a back portion, 7 or 107; a crotch portion, 8 or 108; fastener receptive area, 17 or the area beneath releasable fastening points adjacent 115 and 116 or both; lateral sections 113, 114, see col. 3, lines 40-42, 46-47 and 61-65; which have inner portions, adjacent 115 and 116; outer portions; at least portions of 113 and 114 adjacent 110 (Note the dashed lines in Figure 3 denoting the edge of the absorbent 103 and side edges of 106 and see element 17 in Figure 2 with regard to the dashed line denoting the absorbent 3 and the solid lines denoting the side edges of 6); outer edges, 113 and 114 adjacent side edges of back portion; releasable fasteners, i.e. 115, 116 alone or in combination with releasable fastening points adjacent 115 and 116; having an inner edge and an outer edge and releasably fastened to the front portion or fastener receptive portion closer to the longitudinal axis than to the outer edge of the respective lateral section, see Figure 3; the outer portion of the lateral sections attached at at least one attachment site to the front portion inwardly of but adjacent the side edges, i.e. at least the points 110 closest to or next to the side edges of front portion 6; and one or more of such sites which are closest to the inner edge of the releasable fastener, i.e. at least the points 110 closest to or next to the side edges, closer to the side edge than to the inner edge, see Figure 3. With regard to lines 1-5 of section (d) of claim 8, see, e.g., col. 2, lines 7-12, col. 4, lines 4-21, col. 5, lines 14-31, see again Figure 1 and Figure 2 and note col. 2, lines 28-31, i.e. Figure 2 shows the diaper of Figure 1 in the opened state, shows no fracturing of front portion, i.e. attachment sites can be separated from the front portion and the releasable fastener released and then caused to correspond again or be brought into proper position again to refasten, i.e. adjust, the releasable fastener without fracturing. Therefore, while the Romare patent is believed to explicitly set forth the strength of attachments, even if not, the

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structure of the fastenings of Romare is the same as that claimed. Therefore there is sufficient factual basis for one to conclude that the capabilities and functions of such claimed structure are also inherent in the same structure of Romare, see MPEP 2112.01.

With regard to the amendment to section (b) of claim 8 of 10-7-05, it is noted that such claim language does not require configuration for only adjustment at least in the direction toward one another or such adjustment prior to all adjustment in some other direction. The Romare reference, see discussion supra and infra, teaches the outer edges of the fasteners being spaced from each other and the lateral sections to which such are attached being stretchable, i.e. elastic, i.e. adjustable, in the transverse direction, i.e. direction in which the outer edges are moved towards and away from each other. With regard to the amendment to section (d) of claim 8 of 10-7-05, it is noted again, see the Claim Language interpretation section supra, the claims do not require the outer portion to be attached to the front portion only by “the at least one attachment site” having requirements 1)-4) supra, that at least the points 110 closest to or next to the side edges of front portion 6; and one or more of such sites which are closest to the inner edge of the releaseable fastener, i.e. at least the points 110 closest to or next to the side edges, are closer to the side edge than to the inner edge as claimed and spaced from the outer edge of the fastener also, see Figure 3. Therefore, while the Romare patent is believed to explicitly set forth that such outer edges and attachment sites are configured as now claimed in sections (b) and (d), i.e. the attachments sites adjacent the side edges are spaced far enough away from the outer edge of the fastener, i.e. configured, so as to remain intact when the outer edges of the releaseable fasteners are lifted away from the receptive area and moved transversely, i.e. at a minimum moved towards one another at some time, even if not, the structure of the fasteners and sites of Romare

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is the same as that claimed. Therefore there is sufficient factual basis for one to conclude that the capabilities and functions of such claimed structure are also inherent in the same structure of Romare, see MPEP 2112.01.

Claims 1 and 9: see Figure 3 and col. 3, lines 58-65.

Claim 21: see Figures and, e.g., col. 3, line 58-col. 4, line 21, and col. 5, lines 14-25.

Claims 22-23: see discussion of claims 1, 3-5, 8-12 and 21 supra. Additionally with regard to lines 12-15 and 19-26, i.e. these lines set forth the functions, capabilities and properties of the lateral sections and attachment site structure. See also Claim Language Interpretation Section supra and cited portions of Romare supra, especially col. 2, lines 12-13, col. 3, lines 34-36, col. 5, lines 6-7. Therefore, at the very least, the structure of the sections and sites of Romare as configured is the same as that claimed. Thus there is sufficient factual basis for one to conclude that the capabilities and functions of such claimed structure, if not already explicitly disclosed, are also inherent in the same structure of Romare, see MPEP 2112.01, especially in light of the lack of clarity discussed supra. With regard to the last three lines of claim 22, see discussion of claim 8, sections (b) and (d), supra which discussion also applies here.

Claim 24: See discussion of claims supra and Figure 3, the spaces adjacent the ends of the lines from 113 and 114 are free from direct attachment and such spaces are between the releasable fastening at the inner portion and the at least one attachment site, i.e. the areas between the two dashed lines at the ends of the lines from 110 in Figure 3.

Response to Arguments

11. Applicants remarks with regard to the matters of form have been noted but are either deemed moot in that they have not been reraised or are deemed not persuasive for the reasons set forth supra. It is noted that the remarks do not appear to explicitly address the objection of paragraph 6, section 3) supra. Applicant's remarks with respect to Romare have also been considered but are deemed not persuasive because such are narrower than the claim language and the teachings of Romare. For example, Applicant argues that the fasteners and sites of Figures 1 and 2 do not meet the claim language. However, as noted supra, Romare also teaches the embodiment of Figure 3 which does meet the claim language and the claim language does not require the fasteners only be adjusted in a direction towards each other.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendment to the claims 8, 22 and 24.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
March 28, 2006